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Whatcom County Elections

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

FRED A. PULPHUS, a married person,

CASE NO. 21-2-01395-31

Plaintiff,

AMENDED COMPLAINT

vs.

COMPASS HEALTH, a Washington
Corporation, WHATCOM COUNTY,
WHATCOM COUNTY SHERIFF'S OFFICE,
and WENDY JONES

Defendants.

1 COMES NOW, Plaintiff, Fred A. Pulphus, by and through his undersigned
2 attorneys against Defendants as follows:

3

4 I. PARTIES

5 1.1 Plaintiff Fred A. Pulphus ("Pulphus" or "Plaintiff") resides in Custer,
6 Washington. Pulphus is Black and is a member of a protected class under the
7 Washington Law Against Discrimination, RCW 49.60, et seq.

8 1.2 Defendant Compass Health ("Compass" or "Defendant") is a Washington
9 corporation with its principal office in Everett, Washington.

10 1.3 Compass employs at least eight employees. During all relevant times,
11 Compass is the employer of Pulphus within the meaning of RCW 49.60, et seq.

12 1.4 At all times material to this Complaint, Defendants Whatcom County and
13 Whatcom County Sheriff's office oversaw and were in charge of all activities at the
14 Whatcom County Jail, located in Bellingham, Washington. Defendants Whatcom County
15 and Whatcom County Sheriff's Office are governmental entities or departments duly
16 organized and existing under the laws of the state of Washington and are independently
17 and/or vicariously liable for the tortious and illegal conduct of their officers, managers,
18 directors, and employees, and for their policies and practices that violate Washington
19 law or federal law.

20 1.5 At all times material to this complaint, Wendy Jones ("Jones") was
21 purporting to act in her official capacity as Whatcom County's Chief Corrections Deputy
22 and director in charge of all activities at the jail. Hereinafter, Defendants Whatcom
23 County, Whatcom County Sheriff's Office, and Wendy Jones are collectively referred to
25 as "Jail Defendants".

26

27 II. VENUE AND JURISDICTION

28 2.1 Venue is appropriate under RCW 4.12.025 because Snohomish County is
29 where Compass' headquarters is located, where Compass has an office for the
30 transaction of business, where Compass transacted business at the time the cause of

1 action arose, and where some decisions and actions pertinent to causes of action pled
2 herein occurred.

3 2.2 This Court has jurisdiction over this matter under RCW 4.28.020 and
4 RCW 4.28.080. The Superior Court of Snohomish County, State of Washington, has
5 subject matter jurisdiction over this action under RCW 2.08.010.

III. FACTS

Background

9 3.1 Plaintiff re-alleges all the preceding paragraphs of the Complaint and
10 hereby incorporates the same by reference.

3.2 Pulphus has worked in the mental health field for over 20 years. His career began in Whatcom County in 1985, working with youth involved in the criminal justice system. In December of 2018, Compass recruited Pulphus to work at the jail based on his experience and skill working with youth and vulnerable populations.

15 3.3 After interviewing with Compass, Compass offered Pulphus a job at the
16 Whatcom County Jail on the "Jail/Juvenile Behavioral Health Team" (JJBHT) as a
17 Mental Health Professional. Pulphus understood that this job not only advanced his
18 career but would enable him to do the work about which he was most passionate:
19 working with incarcerated youth. Pulphus accepted the position.

20 3.4 Compass provides behavioral and mental health services to adult and
21 youth inmates at the jail for Whatcom County. Compass is part of a healthcare team,
22 along with nurses and medical providers.

23 3.5 On or around January 23, 2020, Defendants banned Pulphus from the
24 jail, so that he could not work there.

Defendants Subject Pulphus to Racial Discrimination, Retaliation, and Hostile Work Environment

29 3.6 At the initial interview, the Compass manager of the JJBHT program,
30 Laura Savage stated, "I fucking hate that shit" and, "He is full of shit". Savage's

1 statement was in response to Pulphus' observation and remark that he was the only
2 Black person at the interview. Compass offered him the job at the jail, and Pulphus
3 accepted. He started working at the jail on or around December 17, 2018.

4 3.7 Defendants prejudged Pulphus as being inferior and incapable when he
5 started working at the jail. Compass personnel demeaned, ignored, sidelined, and spoke
6 aggressively toward him. They withheld basic information, professional courtesies,
7 collaboration, and training.

8 3.8 A swastika and other likely racist symbols were left at a table where
9 Pulphus was known to eat in a break room at the jail, for him to find.

10 3.9 A co-worker, Heidi Zosel, singled out Pulphus and accused him of eating
11 donuts with his "bare hands", even though this was normally how other people ate the
12 donuts. This racist comment implied that it was dirty for Pulphus to do this because he
13 was Black, but not dirty or uncouth when White people ate donuts with their bare hands.

14 3.10 Several times, Savage referred to Pulphus and Nicole Torres, Pulphus'
15 direct supervisor, as "homies", simply because they were both Black.

16 3.11 Regularly, Savage and others presumed that Pulphus was at fault for
17 errors without asking him about them or investigating. Compass' false statements
18 regarding presumed errors by Pulphus were published to others inside and outside
19 Compass and the jail.

20 3.12 At a company event, where vendors offered free things, Savage collected
21 an armful of them saying to Pulphus, "It's the Mexican in me." Savages' comment to
22 Pulphus arises from racist stereotypes that people of color are poor or cheap.

23 3.13 In response to hearing that Pulphus asked to use a company car instead
24 of his own for travel for work, Savage commented, "Is Fred ghetto?"

26 3.14 At a meeting with Savage and other Compass members of the JJBHT,
27 Zosel stated that she could get Pulphus fired and that she would tell colleagues to help
28 her fire Pulphus from the jail.

29

30 **Management and Jail Defendants Knew of the Racism**

1 3.15 On or around February of 2019, Pulphus reported to Torres, his direct
2 supervisor, that Zosel and Alyson Batcheler-Bestle, a co-worker, were harassing and
3 making racist comments about him.

4 3.16 Pulphus also reported to Savage that Zosel was telling others that she
5 can get Pulphus fired. In response, Savage acknowledged that "Heidi and Alyson are
6 bullies" but took no meaningful action.

7 3.17 Pulphus complained to Defendant Jones about Zosel and Batchelder-
8 Bestle's harassment and racially-motivated actions targeting Pulphus. Jail Defendants
9 did not address his concerns.

10 3.18 Pulphus also called the hotline provided by Compass and reported the
11 harassment, hostility, and discrimination he was experiencing at the jail.

12 3.19 In May of 2019, Torres reported to Savage that Zosel was harassing and
13 racially discriminatory toward Pulphus. Savage scoffed and stated in response that there
14 was "Black privilege at Compass", implying that Pulphus was receiving privileges over
15 White employees because he was Black.

16 3.20 Torres reported to the upper management at Compass that Savage and
17 co-workers discriminated against Pulphus, including reports she made in August and
18 September of 2019. The reports included a report to Chris Starets-Foote and Cynthia
19 Kahler, management at Compass. In regards to Torres' the reports, Savage replied that
20 Pulphus needed to get "thicker skin." Again, Savage asked if Torres and Pulphus were
21 "homies," and stated something to the effect that if they were homies, Torres would not
22 know how to be professional or unbiased which could be a problem.

23 3.21 In September of 2019, management was specifically notified of several
24 instances of discrimination. Management was notified that Savage told Torres, "I thought
25 that you were all homies" when Savage asked Torres if she knew where Pulphus was,
26 and Torres replied that she did not know. Also, Torres reported that Zosel was
27 aggressively targeting Pulphus, harassing him, and trying to get rid of him.

28 3.22 Zosel had stated that she is "friends with everyone at the jail" and she can
29 get people "fired" from the jail. Also, Zosel's brother-in-law was a Whatcom County

1 Sheriff's deputy. At one staff meeting with Savage present, Zosel slammed her fist and
2 shouted that she will make sure that her friends at the jail report Pulphus.

3 3.23 Pulphus continued to seek help from Defendants and made numerous
4 reports about the racism and harassment he suffered, including to the CEO of Compass.
5 On November 11, 2019, Pulphus emailed and met with LaJolla Peters, Compass Human
6 Resources, about the on-going discrimination and hostility at work.

7 3.24 Jail Defendants were aware that Pulphus had complained to Compass
8 about Zosel and Batchelder-Bestle and that Compass employees and management no
9 longer wanted Pulphus to work at the jail.

10 3.25 On or around March 17, 2020, Pulphus filed a charge of discrimination
11 against Compass with the U.S. Equal Employment Opportunity Commission and the
12 Washington State Human Rights Commission.

13 3.26 On or around April 7, 2020, Pulphus filed a grievance with his union
14 against Zosel, Batchelder-Bestle, and Savage for discrimination and requested that
15 Defendants lift the ban from the jail.

16

17 **Hostile Work Environment Continues**

18 3.27 Compass employees and managers attributed mistakes to Pulphus that
19 he did not make. To or in front of others, Compass made statements to the effect that he
20 was incompetent or stupid.

21 3.28 On or around January 23, 2020, BreAnna Brock, a nursing supervisor at
22 the jail, and friend of Zosel, told Jail Defendants something to the effect that Pulphus
23 breached an inmate's privacy in sharing extremely personal information with other
24 members of the healthcare team and people outside the healthcare team. As a result of
25 the charge, Jail Defendants banned Pulphus from the jail.

26 3.29 Jail Defendants' implementation of the ban was arbitrary and capricious.
27 Jail Defendants implemented the ban, in whole or in part, in retaliation for Pulphus'
28 complaints to Defendants Jones and Compass about Zosel and Batchelder-Bestle's
29 discriminatory actions toward Pulphus.

1 3.30 Jail Defendants communicated the ban to Savage. Savage called
2 Pulphus as he was going to work at the jail. This was the first time Pulphus learned that
3 Jail Defendants had banned him. Pulphus was not given any notice or opportunity to be
4 heard regarding the charges.

5 3.31 Defendant Whatcom County stated later, in February of 2021, that it
6 provided Compass, via Savage, information indicating that the Jail Defendants were
7 open to working with Compass to reinstate Pulphus' access to the jail. Jail Defendants
8 alleged in February of 2021 that they prevented Pulphus from working at the jail due to a
9 reported violation of federal and state laws.

10 3.32 The charge was false. Pulphus explained the incident and asked
11 Compass to help reinstate him at the jail. He explained how important the job and
12 working with juveniles was to him. In February 2020, he met with management at
13 Compass who he understood was going to take action. They did not.

14 3.33 On multiple occasions, sheriff's deputies approached Pulphus telling him
15 information that they had heard about him relating to the allegations and the ban, which
16 information was incorrect. On information and belief, this false information originated
17 from Compass and Jail Defendants.

18 3.34 Even though Pulphus asked Compass multiple times to take action,
19 including enlisting help from his union, Compass did not take meaningful action.
20 Compass denied Pulphus the process and disciplinary practices and policies extended
21 to other employees. Compass' treatment of Pulphus was discriminatory and harsher
22 than Compass' treatment of other employees.

23 3.35 In retaliation for complaining about discrimination and hostile work
24 environment, Compass refused to take meaningful action regarding the ban and
25 transferred Pulphus to another facility under the supervision of Lisa Zurek, Compass
26 manager. Zurek had previously expressed her dislike for Pulphus.

27 3.36 Compass' discrimination, harassment, and hostility continued after the
28 ban, including singling out Pulphus for additional weekly one on one, in-person meetings
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1 with Zurek, during the Covid-19 pandemic. These meetings have been required for
2 approximately one year and are on-going.

3 3.37 Compass and Jail Defendants made, allowed, or sanctioned their agents'
4 untrue statements to third parties about Pulphus, his character, the charges relating to
5 the ban, his work at Compass, the jail, and his clients.

6 3.38 Compass' actions have denied Pulphus access to promotion, pay
7 increase, lost income, employment opportunities and career opportunities, now and in
8 the future.

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10 **IV. ADMINISTRATIVE AND NOTICE REQUIREMENTS**

11 Plaintiff submitted a tort claim form for damages to Whatcom County on January
12 29, 2021. More than sixty days have passed since the presentment of those claims.
13 Accordingly, Plaintiff has exhausted the waiting period requirement, satisfied the
14 requirements of RCW 4.96.020, and the claims are properly before the Court.

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16 **V. FIRST CAUSE OF ACTION (AGAINST COMPASS HEALTH) –**
17 **VIOLATION OF THE WASHINGTON LAW AGAINST DISCRIMINATION**

18 5.1 Plaintiff re-alleges all preceding paragraphs of the Complaint and hereby
19 incorporates the same by reference.

20 5.2 The Washington Law Against Discrimination, RCW 49.60 *et. seq.*
21 ("WLAD"), establishes that it is a civil right in Washington to be free from discrimination
22 in the workplace based on a protected status, including race. The law forbids all forms of
23 discrimination, retaliation, hostile work environment, and disparate treatment.

24 5.3 Compass discriminates against Pulphus and creates a hostile work
25 environment because of his race and retaliates against Pulphus for protected activity, all
26 in violation of the WLAD, RCW 49.60.

27 5.4 As a direct and proximate result of Compass' unlawful acts and
28 omissions, Pulphus sustained injuries and damages, to include but not limited to lost
29 wages, loss of enjoyment of life, traumatic stress, anxiety, mental anguish, mental injury

1 and suffering, harm to reputation, loss of employment opportunities, and other non-
2 economic damages in an amount to be proven at trial.

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4 **VI. SECOND CAUSE OF ACTION (AGAINST WENDY JONES) –**
5 **VIOLATION OF DUE PROCESS, 42 U.S.C.A. § 1983**

6 6.1 Plaintiff re-alleges all preceding paragraphs of the Complaint and hereby
7 incorporates the same by reference.

8 6.2 The Fourteenth Amendment to the United States Constitution guarantees
9 that no "State [shall] deprive any person of life, liberty, or property without due process of
10 law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S.
11 const., amend. XIV, §1, cl. 3.

12 6.3 Pulphus' right to pursue the lawful career of his choice without arbitrary
13 interference is a well and clearly established interest protected by the Due Process
14 clause.

15 6.4 Jail Defendants violated Pulphus' right to Due Process to protect his
16 liberty and property interests and abused governmental power when they failed to
17 provide protection against arbitrary banning from work at the jail, failed to investigate or
18 adequately investigate the charge, failed to give advance notice of the pendency or
19 contemplation of a ban or of the charges and evidence which allegedly gave rise to the
20 concern prior to the ban, and failed to give Pulphus a meaningful opportunity to speak in
21 his own defense. Jail Defendants disclosed the charges publicly, impairing Pulphus'
22 reputation for honesty and morality.

23 6.5 Jail Defendants are state actors and as such are required to provide Due
24 Process of law when depriving people of their liberty or property interests in their rights
25 to pursue the lawful career of their choice.

26 6.6 Jail Defendants banned Pulphus from working at the jail without Due
27 Process in violation of federal and state laws and public policies. Defendants violated
28 Pulphus' substantive and procedural Due Process rights to be free from arbitrary and
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1 capricious government action affecting his ability to pursue the lawful career of his
2 choice.

3 6.7 Defendant Jones acted maliciously and with ill will, intentionally,
4 knowingly, and/or with reckless or with callous disregard and/or deliberate indifference to
5 Pulphus' constitutional rights.

6 6.8 As a direct and proximate result of Jail Defendants' Due Process
7 violations, Pulphus sustained injuries and damages, to include but not limited to lost
8 wages, loss of enjoyment of life, traumatic stress, anxiety, mental anguish, mental injury
9 and suffering, harm to reputation, loss of employment opportunities, and other non-
10 economic damages in an amount to be proven at trial.

11 6.9 Jail Defendants' acts and omissions, complained of above, were taken
12 under color of law. These actions violated clearly established rights under the Fourteenth
13 Amendment.

14 6.10 Pulphus is entitled to attorneys' fees, costs, and punitive damages.

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16 **VII. THIRD CAUSE OF ACTION (AGAINST WENDY JONES) – VIOLATION**
17 **OF EQUAL PROTECTION, 42 U.S.C.A. § 1983**

18 7.1 Plaintiff re-alleges all preceding paragraphs of the Complaint and hereby
19 incorporates the same by reference.

20 7.2 The Fourteenth Amendment to the United States Constitution guarantees
21 that no "State [shall] deprive any person of life, liberty, or property without due process of
22 law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S.
23 const., amend. XIV, §1, cl. 3.

24 7.3 Jail Defendants treated Pulphus unequally, failed to investigate, or
25 adequately investigate, and deprived him of process and career choices afforded to
26 others similarly situated because he is Black.

27 7.4 The right to be treated equally and to be afforded Equal Protection of the
28 law is a well and clearly established right.

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1 7.5 The actions of Jail Defendants, complained of above, were taken under
2 color of law. These actions violated clearly established rights under the Fourteenth
3 Amendment.

4 7.6 Defendant Jones acted maliciously and with ill will, intentionally,
5 knowingly, and/or with reckless or callous disregard and/or deliberate indifference to
6 Pulphus' constitutional rights.

7 7.7 As a direct and proximate result of Jail Defendants' Equal Protection
8 violations, Pulphus sustained injuries and damages, to include but not limited to lost
9 wages, loss of enjoyment of life, traumatic stress, anxiety, mental anguish, mental injury
10 and suffering, harm to reputation, loss of employment opportunities, and other non-
11 economic damages in an amount to be proven at trial.

12 7.8 Pulphus is entitled to attorneys' fees, costs, and punitive damages.

13

14 **VIII. FOURTH CAUSE OF ACTION (AGAINST WHATCOM COUNTY, WHATCOM**
15 **COUNTY SHERIFF'S OFFICE, AND WENDY JONES) – TORTIOUS INTERFERENCE**

16 8.1 Plaintiff re-alleges all preceding paragraphs of the Complaint and hereby
17 incorporates the same by reference.

18 8.2 Jail Defendants knew of Pulphus' valid contractual employment
19 relationship with Compass. Pulphus had a reasonable expectation that he would
20 continue in his employment with Compass to provide behavioral health to adult and
21 youth inmates at the jail with mental health and substance abuse issues.

22 8.3 Jail Defendants' actions interfered with Pulphus' ability to continue
23 working with incarcerated youth and adults with mental health and substance abuse
24 issues.

25 8.4 Jail Defendants' interference was wrongful and retaliatory. Jail
26 Defendants' deprived Pulphus of Due Process, process afforded by Washington law,
27 and process and treatment afforded to others similarly situated. Jail Defendants'
28 interference was motivated in whole or in part by a desire to interfere with Pulphus'
29 contractual relationship and reasonable expectancy that he would continue working at
30 the jail.

1 8.5 As a direct and proximate result of Jail Defendants' tortious interference,
2 Pulphus sustained injuries and damages, to include but not limited to lost wages, loss of
3 enjoyment of life, traumatic stress, anxiety, mental anguish, mental injury and suffering,
4 harm to reputation, loss of employment opportunities, and other non-economic damages
5 in an amount to be proven at trial.

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7 **IX. FIFTH CAUSE OF ACTION (AGAINST WHATCOM COUNTY, WHATCOM
8 COUNTY SHERIFF'S OFFICE, AND WENDY JONES) – VIOLATION OF THE
9 WASHINGTON LAW AGAINST DISCRIMINATION**

10 9.1 Plaintiff re-alleges all preceding paragraphs of the Complaint and hereby
11 incorporates the same by reference.

12 9.2 The Washington Law Against Discrimination, RCW 49.60 *et. seq.*
13 ("WLAD"), establishes that it is a civil right for any inhabitant in the state to be free from
14 discrimination based on a protected status, including race. The WLAD forbids all forms
15 of discrimination including retaliation, hostile work environment, and disparate treatment
16 when it is based on a person's status in a protected class under WLAD.

17 9.3 Jail Defendants' actions, including the ban, denial of equal treatment, and
18 denial of process, were discriminatory against Pulphus on account of his race.

19 9.4 Jail Defendants aided and abetted Compass, and furthered Compass'
20 interest in ending Pulphus' work at the jail. In the alternative, Jail Defendants incited
21 Compass' discriminatory and retaliatory actions against Pulphus.

22 9.5 Jail Defendants' actions violated Pulphus' right to engage in commerce
23 free from a discriminatory blacklist.

25 9.6 Jail Defendants banned Pulphus, denied him process, and denied him
26 equal treatment in retaliation for Pulphus' complaints of discrimination.

27 9.7 Jail Defendants discriminated against Pulphus because of his race,
28 created a hostile work environment, and retaliated against Pulphus for protected activity,
29 all in violation of the WLAD, RCW 49.60.

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1 9.8 As a direct and proximate result of Jail Defendants' unlawful conduct,
2 Pulphus sustained injuries and damages, to include but not limited to lost wages, loss of
3 enjoyment of life, traumatic stress, anxiety, mental anguish, mental injury and suffering,
4 harm to reputation, loss of employment opportunities, and other non-economic damages
5 in an amount to be proven at trial.

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7 **X. SIXTH CAUSE OF ACTION (AGAINST WHATCOM COUNTY, WHATCOM**
8 **COUNTY SHERIFF'S OFFICE, AND WENDY JONES) – NEGLIGENCE**

9 10.1 Plaintiff re-alleges all preceding paragraphs of the Complaint and hereby
10 incorporates the same by reference.

11 10.2 Jail Defendants owed Pulphus a duty to use reasonable care in
12 investigating the charge against him, in coming to the decision to ban him from working
13 in the jail, and in avoiding negligent infliction of emotional distress. Jail Defendants failed
14 to do so.

15 10.3 As a direct and proximate result of Jail Defendants' breaches, Pulphus
16 sustained injuries and damages, to include but not limited to lost wages, loss of
17 enjoyment of life, traumatic stress, anxiety, mental anguish, mental injury and suffering,
18 harm to reputation, loss of employment opportunities, and other non-economic damages
19 in an amount to be proven at trial.

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21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff requests the following relief:

23 A. Damages in an amount to be determined at trial, including by not limited
24 to emotional pain, suffering, loss of enjoyment/quality of life, humiliation, and distress;

25 B. Damages for lost compensation and future pecuniary losses, including
26 but not limited to unpaid wages and benefits, both past and future, including front pay
27 and back pay, in an amount to be determined at trial;

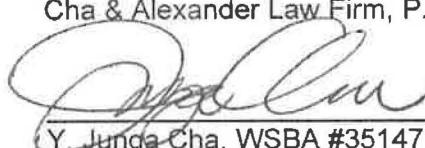
28 C. Punitive damages in an amount to be determined at trial;

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1 D. Costs and reasonable attorneys' fees incurred with this lawsuit as
2 permitted under the WLAD, RCW 49.60, 42 U.S.C.A. § 1983, and other applicable law;
3 E. Compensation for the tax penalty associated with any recovery;
4 F. Award of pre-judgment interest and post-judgment interest to the fullest
5 extent allowed by law; and
6 G. Such other and further relief as the Court deems just and equitable.

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9 DATED June 21, 2021.
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12 Cha & Alexander Law Firm, P.S.
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14 Y. Junga Cha, WSBA #35147
15 Edward S. Alexander, WSBA #33818
16 Attorneys for Plaintiff
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